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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,549	01/30/2004	Paul Hebenstreit	C019836/0101147	6605
49328	7590	10/31/2005	EXAMINER	
BRYAN CAVE LLP 211 NORTH BROADWAY SUITE 3600 ST. LOUIS, MO 63102-2750			GIBSON, RANDY W	
			ART UNIT	PAPER NUMBER
			2841	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

<b>Office Action Summary</b>	<b>Application No.</b> 10/768,549	<b>Applicant(s)</b> HEBENSTREIT, PAUL	
	<b>Examiner</b> Randy W. Gibson	<b>Art Unit</b> 2841	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/26/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "load cell", the "dampening device for the load cell", the rotatable mounting between the load cell & the receptacle, the "processor" & "A/D/ converter", must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the load cell 32, the axle 38, and Figure 3 does not actually have an element number 32 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application; *supra*.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-7 and 12-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Krolopp (US # 3,539,028). Krolopp disclosed the claimed invention including a load cell (14), processing circuitry (80), a rotating receptacle (2), a motor (64), and a disengageable connection between the motor & receptacle (60).

The preamble recitation the apparatus is for weighing “portions of semi-solid matter” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the

process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976); *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951); and *MPEP* § 2111.02.

In addition, the examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference (or, in the case of process claims, a manipulative difference) between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See, e.g., *In re Otto*, 312 F.2d 937, 938, 136 USPQ 458, 459 (CCPA 1963); *In re Sinex*, 309 F.2d 488, 492, 135 USPQ 302, 305 (CCPA 1962); and, *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8-11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krolopp in view of Smith et al (US # 4,130,171). Krolopp discloses the claimed invention except for the use of the A/D/ converter, the storing of the tare weight of the empty scale in memory, the steps of delaying the reading of the scale until a certain

time has passed, and averaging samples. Krolopp does not have any of the aforementioned elements or method steps because it has an analog controller. However, the examiner notes that it is extremely well known to upgrade from an analog controller to a digital microprocessor controller as shown by the example of Smith, which makes necessary the use of an A/D converter to allow the microprocessor to read the analog weight signal (Col. 6, lines 45-54). It would have been obvious to upgrade the device of Krolopp to include a more efficient digital controller.

It is inherent that a scale must subtract off the tare weight of the empty scale pan in order to be accurate, and Smith shows that a digital scale measures tare weight between weighings and stores it in memory to be used during the subsequent weighing operation in memory as claimed (Col. 7, lines 20-49). It would have been obvious to tare the scale of Krolopp for greater accuracy.

Smith also teach that it is known to delay the weight reading to allow the scale to settle, and to average the weight readings (Col. 7, lines 1-3; Col. 7, line 50 to col. 8, line 53). It would have been obvious to program the device of Krolopp to delay the weight reading to allow the scale to settle, and to average the weight readings, to improve the accuracy of the weight readings.

7. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krolopp in view of Smith et al as applied to claims 8-11 & 20 above, and further in view of Hebenstreit (US # 6,441,321). The aforementioned combination mentions that this type of scale has problems with vibrations affecting the weight readings. Hebenstreit

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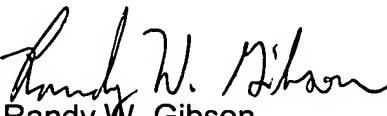
discloses that it is known to provide a load cell with a damper in order to allow the scale to settle faster (Col. 4, lines 43-67). It would have been obvious to the ordinary practitioner to include a damping mechanism in the device of Krolopp to improve accuracy and to lessen the delay interval (thereby increasing throughput).

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (571) 272-2103. The examiner can normally be reached on Mon-Fri., 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamand Cuneo can be reached on (571) 272-1957. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Randy W. Gibson  
Primary Examiner  
Art Unit 2841